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Citation for published version:

Czajkowski, K 2016, 'Justice in client kingdoms: The many trials of Herod's sons', *Historia: Zeitschrift für Alte Geschichte*, vol. 65, no. 4, pp. 473–496.
<<http://www.ingentaconnect.com/content/fsv/histori/2016/00000065/00000004/art00005>>

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Publisher's PDF, also known as Version of record

Published In:

Historia: Zeitschrift für Alte Geschichte

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Justice in Client Kingdoms

The Many Trials of Herod's Sons*

ABSTRACT: While Herod was content to dispose of other members of his family without Roman involvement, he was careful to consult with his imperial overlords before taking drastic action against his sons. Yet he also constantly claimed that he had the power to deal with them as he pleased. Through a detailed examination of the trial narratives found in Josephus, this article considers the level and nature of Roman involvement in these proceedings, Herod's possible motivations for calling them in, and what this can reveal to us about the operation of justice in client kingdoms.

Keywords: Herod – client kingdoms – justice – law – Josephus

Introduction

Herod's propensity for killing off his relatives is so well known as to be classed as notorious. His wife Mariamne, her brother Aristobulus and her mother Alexandra all fell victim to him. So did three of his sons: Alexander, Aristobulus and Antipater. Yet in these latter cases, Herod proceeded with rather more caution than he had in others. When seeking to execute his sons, Herod was extremely careful to involve the Roman imperial authorities in various ways: Alexander and Aristobulus were once tried before Augustus himself, and later came before a court at Berytus, whose composition was advised upon by the emperor. Antipater was tried by the governor of Syria, and his execution was deferred until Herod had explicit permission from Augustus. Thus, despite the fact that Herod's own competency to do as he pleased with his sons is emphasized throughout the accounts of these proceedings, he is cautious in the extreme in exercising this power, and in practice seems to have preferred to gain Roman approval before proceeding to exact the ultimate punishment.

The handling of these trials provides a fascinating glimpse into the position of a client kingdom, and its client king, in the early imperial era.¹ In particular, a closer examination of these three episodes, along with one additional example, may help us better understand the complex dynamics that influenced the process of justice ad-

* My thanks go to *Historia's* two anonymous peer reviewers, whose comments were extremely helpful in improving this article. All remaining errors are of course my own.

1 There have been a few detailed treatments of these episodes: see especially Volkmann (1969: 153–161), Bammel (1986), Rabello (1992) and most recently Schuol (2007: 145–157). On Roman client kingship more generally, Kropp (2013: 1, n.1) provides an excellent overview of the literature, to which the recent edited volumes of Jehne and Pina Polo (2015), and Baltrusch and Wilker (2015) should be added.

ministration both in this particular kingdom and potentially in others at this time. Consequently, the case narratives as preserved by Josephus are laid out one by one below. It will be suggested that there was a delicate mixture of personal objectives, and both internal and external political concerns at play in Herod's decisions about how to act. Such motives are inextricably linked due to the very nature of client kingship, and the great emphasis placed on personal relationships in their connection with Rome.²

It should be acknowledged that we are of course analysing a secondary account. Much of what follows could be read simply as either Josephus' or his source, Nicolaus of Damascus', presentation of the situation rather than the 'actuality' of events, court politics or indeed Herod's personal motivations. But both these writers' perspectives would be interesting in and of themselves: Josephus was a member of the Jewish elite, and Nicolaus of Damascus the trusted adviser of Herod the Great, who even advised on strategy in some of these proceedings. Their perspectives on the constraints and motivations of the elite in such cases are not without value, even if they do not represent the true motivations of Herod himself. They can still reveal either how a close insider viewed these events, or what a later elite Jew thought about the proceedings. Either way, we would have a valuable perspective on the relationship between Rome and Jerusalem.

The First Proceedings Against Alexander and Aristobulus (12 B. C. E.)

Alexander and Aristobulus had the misfortune to come under suspicion several times in their lives, but the first trial came in 12 B. C. E.³ According to Josephus' account in the *Antiquitates*, Herod's other son, Antipater, although away in Rome, took the opportunity to slander his brothers at every turn and stir up his father's anger against them.⁴ In consequence, Herod decided to deal with the young men:

ὥς δὲ μήτ' ἀμελῶν μήτ' ἐκ προπετείας ἀμαρτάνοι, κρεῖττον ἡγήσατο πλεῦσας εἰς Ῥώμην ἐκεῖ τῶν παίδων κατηγορεῖν παρὰ Καίσαρι, καὶ μηδὲν αὐτῷ τοιοῦτον ἐπιτρέπειν, ὃ καὶ διὰ μέγεθος τῆς ἀσεβείας ὑποπτον ἦν.

And in order not to make a mistake through carelessness or rashness, he thought it better to sail to Rome and there accuse his sons before Caesar than to permit himself an action that might be heinous enough to be suspected of impiety.⁵

- 2 See Barrett (1990: 286) on the importance of client kings' "personal relationship" with the emperor, even if their position was "a legal and a formal one;" cf. Curran's (2005: 81) comments on the importance of the personal friendship between Herod and Augustus to the legacy of government in Judaea; Wilker (2007) also emphasizes the role that the family played as mediators between Judaeian and Roman interests throughout her detailed study of the Herodian dynasty.
- 3 The entire episode, including Herod's speech on his return home with his sons after the hearing, is described in *Jos. Ant.* 16.87–135; cf. *Bell.* 1.452–466.
- 4 *Jos. Ant.* 16.87–90.
- 5 *Jos. Ant.* 16.90. All texts and translations of Josephus are taken from the Loeb editions, with some amendments (these will be indicated). Here, I have preferred Whiston's translation of the final part of this quota-

Herod's decision to take the case to Augustus is here presented as an act of caution. Kicking the accusation upstairs is a way of obviating any risk and not acting out of carelessness (ἀμελῶν) or rashness (ἐκ προπετείας). Furthermore, he is also said to fear being suspected of ἀσέβεια, presumably if the proceedings led to the death sentence for his two sons. From the off, then, a mixture of concerns about public perception is brought into play and despite the very specific description prior to this passage of Herod as being in an extremely angry disposition,⁶ his actions here are attributed to caution and calculation.

Herod secures his hearing before Caesar, either at Aquileia or Rome,⁷ and proceeds to accuse his sons. In the *Bellum*, Herod's accusations are greatly abbreviated, and he charges Alexander with an attempt at poisoning him;⁸ those in the *Antiquitates* are much more drawn out, and accompanied by prolonged laments for his situation on Herod's part. The fundamental substance, however, is similar and he accuses his sons of an attempt on his life.⁹ Moreover, towards the end of this speech, Herod makes a significant claim:

τὸ δὲ μέγιστον, οὐδ' ἐπὶ τοιούτοις ἦν εἶχεν ἐξουσίαν ταύτη κατ' αὐτῶν χρησάμενος ἀγαγεῖν ἐπὶ τὸν κοινὸν εὐεργέτην Καίσαρα, καὶ παρελόμενος αὐτοῦ πᾶν ὅσον ἡ πατὴρ ἀσεβούμενος ἢ βασιλεὺς ἐπιβουλευόμενος δύναται, κρίσεως ἰσοτιμία παρεστακέναι.

And what was most important, not even in such circumstances had he used his authority against them but had brought them before Caesar, their common benefactor, and had given up all his own rights as a father undutifully treated and as a king plotted against, and had presented himself for judgment on an equal footing with them.¹⁰

Herod claims that he has the right to deal with his sons as he pleased, yet has not exercised this. His waiving of this power, based on his rights as a father and king, is presented as an act of largesse on his part: a magnanimous gesture that contrasts with the acts of his ungrateful, unruly sons. It also serves, of course, to remind observers of his own status.

Yet the claim that he has “presented himself for judgment on an equal footing with them”, and that this was a favour to his sons is explicitly contradicted by Josephus in his description of Alexander's and Aristobulus' reactions to this speech. Josephus notes that it was difficult for them to make their defence, “since it was not at the moment seemly to speak with frankness if they were thereby to convict him of error in

tion as being slightly stronger than the Loeb's “that might be looked on askance because it greatly violated family loyalty”.

6 Jos. *Ant.* 16.90.

7 Jos. *Ant.* 16.91 states that he managed to catch Caesar up at Aquileia, yet at *Ant.* 16.106, Alexander refers to Herod's bringing his sons before Caesar in Rome; Jos. *Bell.* 1.452 also states that Herod took Alexander to Rome.

8 Jos. *Bell.* 1.452.

9 Jos. *Ant.* 16.91–99; for the accusations concerning the alleged plot against Herod's life, see esp. 91–93. For a literary analysis of Herod's speech, see Landau (2006: 142–143).

10 Jos. *Ant.* 16.98.

his habitual and hasty use of force”.¹¹ In other words, they feared to speak frankly about their father’s accusations because they would then risk denouncing Herod before the emperor. Thus, while Herod presents his choice of forum as a magnanimous gesture, Josephus suggests the reality was that it placed considerable constraints upon his sons as to how to mount their defence. If they spoke the truth, they would risk offending their father anyway and would do so in front of the most powerful man in the empire – evidently a dangerous course.

Despite this, Alexander in his defence speech picks up Herod’s own rhetoric: Herod’s “benevolence” (εὐνοία) towards them is clear in this very trial;¹² it had been in Herod’s power to punish them, but he showed he wanted to save his sons by bringing them to Rome and making Caesar a “witness” (μάρτυρα) to what was done.¹³ Indeed, Alexander’s speech is a rhetorical masterpiece,¹⁴ which apparently moved even his father,¹⁵ and includes a significant switch in describing Caesar, towards the end, as “mediating” between the parties.¹⁶ Whether this was meant in a technical sense is unclear, but, if so, it means that we would perhaps be better to think in terms of Augustus as a mediator or arbitrator here, and thus consider the proceedings in his light: this is no longer a formal trial, but a mediation that aimed to bring about a resolution, even reconciliation, between the two parties. The shift in vocabulary could have a significant legal meaning if it represents reality,¹⁷ but at the very least it is a rather nice piece of rhetorical manoeuvring which is placed in Alexander’s mouth here.

Augustus’ eventual judgment essentially acquitted the two defendants. He did, however, allow Herod to save some face as he pronounced that Alexander and Aristobulus had not demeaned themselves appropriately to their father, which would have allayed any suspicion in the first place.¹⁸ Gifts were then exchanged between emperor and king, and Augustus left it in Herod’s power to decide upon a successor for his kingdom.¹⁹ Cordiality between Rome and the Jewish king thus seems to have been preserved.

11 Jos. Ant. 16.101: οὐκ εὐσχημονοῦντος οὐδὲ τοῦ κατὰ παρρησίαν λόγου πρὸς τὸν καιρόν, εἰ μέλλοιεν ἐκ βίας αἰεὶ καὶ κατὰ σπουδὴν ἐλέγχειν πεπλανημένον.

12 Jos. Ant. 16.105.

13 Jos. Ant. 16.105–106.

14 This may be attributed either to Josephus or his source, Nicolaus of Damascus. Cf. Kasher and Witztum (2007: 263): “The grandiloquent address attributed here to Alexander, the older of the two sons, is truly a masterpiece of oration that demonstrates the literary talents of Nicolaus of Damascus and perhaps also of Josephus as the redactor of his words (AJ XVI, 105–120).” Once again, see Landau (2006: 143–147) for a literary analysis of this speech, whose “tenor and themes ... echo those familiar from tragedy, rather than forensic oratory” (citation from 144).

15 Jos. Ant. 16.121.

16 Jos. Ant. 16.118: the participle used is “μεσιτεύοντι”.

17 Augustus is explicitly described as a δικαστής in the parallel account in Bell. 1.452, though there are then references to reconciliations (see Bell. 1.454: διαλλάξαι; αἱ διαλλαγαι). Kasher and Witztum (2007: 265) go so far as to read into this that there was a conciliation agreement between the parties, signed in the presence of the emperor.

18 Jos. Ant. 16.124.

19 Jos. Ant. 16.128–129.

Further Accusations Against Alexander (c. 10 B. C. E.)

Despite the apparent reconciliation at the end of the previous proceedings, accusations were raised against Alexander once again as a result of the confessions under torture of three of Herod's eunuchs. This did not result in a hearing before the emperor, as in the previous example, but is worth mentioning as an example of an alternative way in which such accusations could be dealt with.

In the *Bellum* account, the three eunuchs reported Alexander as having spoken in rather less than complimentary terms about his father, and having emphasized his position as successor.²⁰ The account in the *Antiquitates* is rather more explicit that he was aiming to take the throne.²¹ Herod's resulting anxiety about his position led to an atmosphere of terror at court.²² During this period, further accusations were levelled against Alexander and his brother Aristobulus by their friends under torture: they had planned to have Herod killed while he was hunting, then flee to Rome. Alexander responded not with denials, but by writing four letters that implicated his enemies, Pheroras and Salome.²³

It was then that the resolution tactics began: Archelaus, king of Cappadocia and Alexander's father-in-law, arrived in Judaea. While initially feigning anger at his son-in-law and daughter, and praising Herod's great restraint at not having executed the pair of them already, he then proceeded to reconcile the parties involved: Herod to Alexander, and Herod to Pheroras.²⁴ As such, we do not see here the same progression to either a formal trial or informal hearing (before Caesar or otherwise); instead a foreign ally acts as mediator. Even if this intervention was a happy accident of circumstance on this occasion,²⁵ it did provide a possible model for how Herod could have dealt with further allegations against his sons if he so pleased. After relations soured with Archelaus, he was presumably still free to avail himself of the advice of any local dynasts and dignitaries in such matters. Yet he did not choose to take this course when problems arose again.

It is notable, nevertheless, that in both accounts word was afterwards sent to Rome about what had occurred.²⁶ Thus, even when the issues were eventually settled, there was still an impulse to keep Caesar informed about events in the royal family, and be seen to do so.

20 The scandalous accusations included that Herod was old, and even had the nerve to dye his hair; Alexander exhorted those around him to pay himself more heed, as Herod's successor. Perhaps more worrying for Herod was the claim that Alexander had the support of certain leading military men (Jos. *Bell.* 1.489–491).

21 Jos. *Ant.* 16.247–250.

22 Jos. *Bell.* 1.492–497; cf. *Ant.* 16.251–253, in which the resulting terror is put down to Herod's own uncertainties about the accusations and desire to find further proofs.

23 Jos. *Bell.* 1.498–499; cf. *Ant.* 16.255–257.

24 Jos. *Bell.* 1.499–512; *Ant.* 16.261–270.

25 Kasher and Witztum (2007: 317) suggest that this was in fact a well thought-out strategy on Archelaus' part, and not a hastily improvised plan.

26 Jos. *Ant.* 16.270; *Bell.* 1.510.

The Second Proceedings Against Alexander and Aristobulus (c. 8–7 B. C. E.)

Further accusations arose a few years later, stirred up by both Eurycles, the Spartan leader, and once again by Antipater.²⁷ This time, Alexander was accused of trying to persuade two of Herod's former bodyguards, Jucundus and Tyrannus, to kill Herod. He was also alleged to have written to the commander of the fortress, asking him to receive himself and his brother, Aristobulus, after they had killed their father.²⁸ The two sons were eventually arrested and word was sent to Augustus via Volumnius and Olympus.²⁹ The emperor's advice was as follows:

σφόδρα μὲν ἡχθέσθη Καῖσαρ ἐπὶ τοῖς νεανίσκοις, οὐ μὴν ὤετο δεῖν ἀφελέσθαι τὸν πατέρα τὴν περὶ τῶν υἱῶν ἐξουσίαν. ἀντιγράφει γοῦν κύριον μὲν αὐτὸν καθιστάς, εὐ μέντοι ποιήσιν λέγων, εἰ μετὰ κοινοῦ συνεδρίου τῶν τε ιδίων συγγενῶν καὶ τῶν κατὰ τὴν ἐπαρχίαν ἡγεμόνων ἐξετάσειεν τὴν ἐπιβουλὴν· κἂν μὲν ἐνέχωνται, κτείνειν, ἔαν δὲ μόνον ὥσιν δρασμὸν βεβουλευμένοι, κολάζειν μετριώτερον.

Caesar, while deeply distressed for the young men, did not think it right to deprive the father of his authority over his sons. He replied accordingly, leaving Herod complete liberty of action, but adding a recommendation to him to hold an inquiry into the plot before a joint council of his own relatives and the provincial governors; then, if his sons were convicted, to put them to death, but if they had merely meditated flight, to be content with a milder penalty.³⁰

This has rather interesting implications, though the language is slightly ambiguous with regard to Herod's existing powers: Augustus did not want to take the power over his sons away from Herod (ἀφελέσθαι τὴν περὶ τῶν υἱῶν ἐξουσίαν), implying that he believed Herod already had the capacity to treat them however he wanted. Yet, in his response, the emperor also confirmed Herod's authority (κύριον μὲν αὐτὸν καθιστάς). This was perhaps simply a restatement of his existing power, but there is an interesting tension here: Herod appears to have had the power to deal with his sons as he wanted theoretically, but in practice Augustus had to confirm it. The situation was thus delicate and might even have required Caesar's go-ahead. Whether this was legally necessary is uncertain, but politically at least this permission to proceed was obviously viewed as vitally important by Herod.

Herod complied with these instructions, though excluded Archelaus from the judges,³¹ and a court (τὸ δικαστήριον) was convened at Berytus.³² The judges included: Saturninus, the governor of Syria, his legates, Pedanius and some others, the procurator Volumnius, the friends and relatives of the king, Salome and Pheroras, and all the

27 Jos. Bell. 1.516–527; Ant. 16.300–312.

28 Concerning Jucundus and Tyrannus, see Jos. Ant. 16.314–316; Bell. 1.527; concerning the commander, see Jos. Bell. 1.528; Ant. 16.317–319.

29 Jos. Bell. 1.535; Ant. 16.332.

30 Jos. Bell. 1.536–537; cf. Ant. 16.356–358.

31 Jos. Bell. 1.538; Ant. 16.360.

32 Jos. Bell. 1.538. In Ant. 16.361 the term used is τὸ συνέδριον.

leading men of Syria (apart from Archelaus).³³ Herod did not, however, bring his sons before the court, keeping them instead at a village nearby.³⁴ He then pleaded his case personally before the judges, apparently with quite some invective.³⁵ The more detailed *Antiquitates* version includes certain significant comments in his closing remarks:

τὸ δὲ τελευταῖον εἰπὼν ὅτι καὶ τῇ φύσει καὶ τῇ Καίσαρος δόσει τὴν ἐξουσίαν αὐτὸς ἔχει, προσέθηκεν αὐτῷ καὶ πάτριον νόμον κελεύειν, εἴ του κατηγορήσαντες οἱ γονεῖς ἐπιθοῖεν τῇ κεφαλῇ τὰς χεῖρας, ἐπάναγκες εἶναι τοῖς περιστάσιν βάλλειν καὶ τοῦτον ἀποκτείνειν τὸν τρόπον. ὅπερ ἔτοιμος ὦν αὐτὸς ἐν τῇ πατρίδι καὶ τῇ βασιλείᾳ ποιεῖν, ὅμως ἀναμεῖναι τὴν ἐκείνων κρίσιν · ἦκειν μέντοι δικαστὰς μὲν οὐχ οὕτως ἐπὶ φανεροῖς οἷς ἐκ τῶν παιδῶν ὀλίγου πάθοι, συννορήσθηναι δὲ καιρὸν ἔχοντας, ὥς οὐδενὶ καὶ τῶν πόρρω γεγονότων ἀμελεῖσαι τοιαύτης ἐπιβουλῆς ἄξιον.

Finally, he said that both by nature and by Caesar's grant he himself had authority to act, but he added that there was also a law in his country that provided that if a man's parents, after accusing him, placed their hands on his head, the bystanders were bound to stone him and to kill him in this way. This, he said, he was prepared to do in his own country and realm but still he awaited their judgment. Moreover, they had come not so much to be judges of the clear crimes of his sons, from which he had almost fatally suffered, as because they had an opportunity to share his anger, since it was not right for anyone, even those far removed, to be unconcerned about so serious a plot.³⁶

There are several points of significance here. First is that, once again, Herod emphasizes that he already has the authority to do as he pleased with his sons both "by nature" and through Caesar's grant. Despite his caution with regards to constantly consulting Caesar, he here asserts again that this was not strictly necessary. He then adds a further source of his power to dispose of them as he saw fit, when he appeals to a *πάτριος νόμος* that would have allowed him to have had his sons executed. Thus before a tribunal convened upon the advice of the Roman emperor, at the Roman colony of Berytus, which included many a Roman official as judge, Herod makes his case at least in part based on a law of his own country.³⁷ This is a tactic not uncommon in the ancient world: appeals to longstanding native customs or traditions could find favourable ears in a Roman court room. But it also means that Herod emphasizes a threefold right to exercise power over his sons, only one of which overtly depends on the Romans. Submitting to this trial, he implies, is something of a courtesy on his part.

While all of the judges condemned the two sons, some recommended lenient treatment, i. e. avoiding the death penalty. The majority, however, tended towards the

33 Jos. *Bell.* 1.538. Jos. *Ant.* 16.362 states that one hundred and fifty people were present, which might suggest many more judges.

34 Jos. *Bell.* 1.539; *Ant.* 16.361.

35 Jos. *Bell.* 1.540; *Ant.* 16.362–366.

36 Jos. *Ant.* 16.365–366.

37 See Jos. *Ant.* 4.260–265; *Deut.* 21:18–21 on what seems to be this law. See also *Exod.* 20:12 and *Deut.* 5:16 on the obligation to honour one's parents; *Exod.* 21:17 and *Lev.* 20:9 on putting to death someone who curses his parents.

harsher punishment.³⁸ This was not imposed immediately,³⁹ and there was an uproar about the verdict led by Tiro, an old soldier, who, along with certain others who had become implicated, ended up being tried and stoned to death before an assembly of the people.⁴⁰ Thereafter, however, Alexander and Aristobulus were strangled quietly in Sebaste, and their bodies interred at Alexandrium.⁴¹

The Proceedings Against Antipater (5 B. C. E.)

Antipater's downfall began while he was staying at Rome, when his resentments and attempts against his father's life became known to Herod.⁴² Antipater was then recalled by the king, without mention of his suspicions,⁴³ and found himself accused by Herod at a meeting with Quintilius Varus, the new governor of Syria currently in Jerusalem. Herod accused his son of murdering his kin and plotting against him, and stated that Varus would be "both his auditor and judge" (τε ἀκροατὴν καὶ δικαστὴν) on the next day.⁴⁴

Antipater thus had a day's notice of his fate. The next day, Varus and Herod himself presided, summoning their friends, the king's relatives (including his sister, Salome), and many other witnesses.⁴⁵ Antipater himself pleaded that Herod would not prejudice him, and that when he was heard by his father, he would keep himself unprejudiced:⁴⁶ the appeal here seems to be purely to Herod, with Varus ignored. This was perhaps a tactic to try to keep the hearing on a personal, or at least internal, level, rather than the slightly more 'official' one that the Roman presence might imply. In any case, Antipater was ordered forward, with Herod making a general lament about his crimes first.⁴⁷ When Herod broke off his accusations in tears, Nicolaus of Damascus took up the mantle to make the – seemingly more official – accusations.⁴⁸

Antipater, however, jumped in first to plead his loyalty to his father. Towards the end of his speech, he makes an interesting plea to Caesar's authority:

τῶν δ' ἐπὶ Ῥώμῃς μάρτυρα εἶναι Καίσαρα ἐπίσης τῷ θεῷ ἀπατηθῆναι μὴ οἶόν τε ὄντα. ὧν πίστιν εἶναι τὰ ὑπ' ἐκείνου γράμματα ἐπεσταλμένα, ὧν οὐ καλῶς ἔχειν ἰσχυροτέρας εἶναι τὰς διαβολὰς τῶν

38 Jos. Bell. 1.540–542; Ant. 16.367–369.

39 At Jos. Bell. 1.543, it is stated that Herod deliberated over how they should die; in Ant. 16.370–372, Nicolaus gives Herod advice concerning opinion at Rome about the matter and Herod is portrayed as being more generally uncertain about how to proceed.

40 Jos. Bell. 1.544–550; Ant. 16.375–394.

41 Jos. Bell. 1.551; Ant. 16.394.

42 Jos. Ant. 17.61–82; Bell. 1.582–607.

43 Jos. Ant. 17.83; Bell. 1.608.

44 Jos. Ant. 17.91; Bell. 1.617–619.

45 Jos. Ant. 17.93; Bell. 1.620.

46 Jos. Ant. 17.94; Bell. 1.621.

47 Jos. Ant. 17.94–98; Bell. 1.622–628.

48 Jos. Ant. 17.99; though Nicolaus is said to continue his prosecution after Antipater's speech (17.106). Cf. Bell. 1.629, 637–638.

στασιάζειν αὐτοὺς προθεμένων, ὧν τὰς πλείους ἀποδημία τῇ αὐτοῦ συντεθῆναι σχολῆς τοῖς ἐχθροῖς ἐγγενομένης, ἣν οὐκ ἂν αὐτοῖς ἐπιδημοῦντος παραγενέσθαι.

As for his behaviour in Rome, Caesar was his witness, and he was just as difficult to deceive as was God. Proof of this was the letter sent them by Caesar, which should not rightly have less force than the slanders of those who were promoting dissension between them, most of these slanders having been composed during his stay abroad, which provided his enemies with an opportunity that would not have been given them if he had been at home.⁴⁹

Antipater's overt appeal to a hierarchy of authority here should be noted, even if this should not be confused with an appeal to be tried at Rome. His argument is that they should believe Caesar's letter above all else, for this had greater weight than any other testimony. While Herod had always been careful to involve Caesar in decisions concerning his sons' fate, here Antipater gets in first and attempts to use the emperor to his own ends. Implicit in this is perhaps: advance against me, and you risk the emperor's wrath.

In his response Nicolaus then directs his attention towards an authority other than Herod:

καὶ οὐχὶ μόνον τὸν πατέρα ἀναιρεῖν μεμελητηκῶς ἐκ τοῦ ἀνθρωπείου, ἀλλ' ἤδη καὶ νόμον τὸν κατὰ σοῦ γεγραμμένον καὶ τὴν ἀρετὴν τὴν Οὐάρου καὶ τοῦ δικαίου τὴν φύσιν ... οὐ ῥύση, Οὐάρε, τὸν βασιλέα τῆς ἐπηρείας τῶν συγγενῶν;

You [Antipater] are fully prepared not only to remove your father from this world but also to annul the law written against you, the virtue of Varus and the nature of justice ... O Varus, will you not save the king from the abuse of his kin?⁵⁰

Nicolaus then continues in his appeal to Varus to do justice for Herod. But the shift here should be noted: first, Antipater is accused of having annulled a written νόμος, but Nicolaus then gradually shifts the emphasis to make this a wider offence, one that is against the virtue of Varus himself. This is no longer a plot against Herod, but pertains to the Roman governor sitting right there, and more than that, to the very nature of justice! This precedes Nicolaus' direct appeal to Varus to help the king. Nicolaus thus explicitly involves and appeals to the emperor's own representative, rather than Herod who was the focus of Antipater's own pleas and was – it must not be forgotten – also presiding.⁵¹ This may be a move on the advisor's part to legitimate proceedings somewhat after Herod's previous invective: Herod is not judging his son, Varus is judging a reckless, treacherous criminal.⁵²

49 Jos. Ant. 17.103–105; cf. Bell. 1.633. In the *Bellum* passage, Antipater claims Caesar often referred to him as φιλοπάτωρ.

50 Jos. Ant. 17.118–120.

51 Jos. Ant. 17.93 Bell. 1.620.

52 Antipater's own defence is simply an appeal to God to confirm his innocence (Jos. Ant. 17.128; Bell. 1.639); Josephus is unrelenting in his scorn for this (Ant. 17.129–130).

The hearing ends suddenly, without mention of a verdict proper. Varus ordered that someone who had already been condemned to death should drink the dregs of the poison which Antipater planned to use against Herod.⁵³ Varus then left, going to his residence in Antioch the next day, and it was simply generally supposed thereafter that Herod had his approval for whatever else he did to his son.⁵⁴ Herod put his son in bonds, and then sent both letters and messengers to Caesar.⁵⁵ Further evidence against Antipater, which involved one of Livia's slaves, then emerged, which made Herod ready to have him executed immediately. Instead he interrogated him once again.⁵⁶

Ἡρώδης δὲ περιαλγῶν ὥρμησε μὲν πέμπειν ἐπὶ Ῥώμης τὸν υἱὸν ὡς Καίσαρα, λόγον ὑφέξοντα τῶν ἐπὶ τοῖσδε βουλευμάτων, ἔπειτα δέισας, μὴ καὶ βοηθεία τῶν φίλων εὐρίσκειτο τοῦ κινδύνου διαφυγᾶς, αὐτὸν μὲν δέσμιον ὡς καὶ πρότερον ἐφύλασσε, αὐτῆς δὲ πρέσβεις ἐξέπεμπε καὶ γράμματα ἐπὶ κατηγορίᾳ τοῦ υἱέος, ὅποσα τε Ἀκμή συγκακουρήσειεν αὐτῷ, καὶ ἀντίγραφα τῶν ἐπιστολῶν.

Thereupon Herod, being deeply grieved, was prompted to send his son to Caesar in Rome to undergo trial for his wicked plotting but later, fearing that with the help of his friends Antipater might find a way to escape this danger, he kept him in chains as before, and again sent envoys with letters (to Rome) to accuse his son and to tell all that Acme had done as his accomplice in crime, and he also sent copies of the letters (that had been intercepted).⁵⁷

Several points should be noted. Herod's reactions at being drawn to great fury and great grief are opposed: first he wanted to do away instantly with his son, without waiting for word from Caesar as he always had before; then, he wanted to simply rid himself of the problem by sending Antipater directly to the emperor. Pragmatism prevailed: Herod still wanted to control the situation and punish Antipater but made sure he kept to his set pattern of waiting for Roman approval. Even in the direst of circumstances he ultimately retained his general caution in waiting for Rome. Yet according to the *Bellum* account, Herod did go so far as to change his will of his own accord, including his selected successors, to exclude Antipater.⁵⁸ We should not overestimate his deferral to the Romans: defining this in terms of a 'reliance' or denying Herod any capacity to act would be going too far.

Ultimately, Caesar's reply was thus: he left it to Herod to do as he pleased with his son and "act as became a father and a king". He could either execute or banish him, as he saw fit.⁵⁹ Once again, Herod's authority was fully confirmed though we might ponder whether the need for approval indicates a slight uncertainty about the extent

53 Jos. *Ant.* 17.131–132.

54 Jos. *Ant.* 17.132–133; *Bell.* 1.640 states that Varus had a private discussion with Herod before leaving and sent an account to Caesar of the whole proceedings (in addition to that which Herod also sent).

55 Jos. *Ant.* 17.132–133; *Bell.* 1.640.

56 Jos. *Ant.* 17.142–144; *Bell.* 1.641–645.

57 Jos. *Ant.* 17.144–145.

58 Jos. *Bell.* 1.646.

59 Jos. *Ant.* 17.182; *Bell.* 1.661.

of this power. Antipater's fate was finally sealed when he rejoiced at Herod's apparent death. Herod ordered him killed swiftly and buried ignominiously.

The Trials and Travails of Herod's Sons

We can see certain common themes that recur in each case. The principal of these which needs explaining is the constant recourse of Herod to the Roman authorities, despite the fact that we would expect him to have the right to act as he wished in his own affairs within his own kingdom. This will therefore need to be explained, and Herod's own position and motivation examined in greater detail. But first, a few comments should be made about the nature of these case narratives and the proceedings themselves.

The Manner of the Proceedings

The three 'trials' have most often been described as types of domestic court (*iudicium domesticum*),⁶⁰ yet there are significant differences between the manner in which the three cases proceeded that make it difficult to pin down their exact nature.⁶¹ Furthermore, such a domestic court in the Roman tradition – which is what has typically been assumed – usually at least involved the *pater familias* in the process of pronouncing judgment.⁶² Most normally, the final judgment rested with him. Yet in at least two of the narratives above, this does not seem to be what happened: only in the proceedings against Antipater is Herod himself actually said to preside with another judge. While Herod always carries out the sentence, the actual judgment of guilt often rests with others. Thus, it is worth reviewing this point in a little more detail.

Of the three proceedings – excluding the accusations in which Archelaus intervened for now as a clear example of mediating intervention by a respected outsider – the second 'trial' of the Hasmonean brothers most clearly has some kind of formal setting.⁶³ Several circumstances point to this: Augustus advises Herod to inquire into

60 See Zucker (1936: 71–72); Volkmann (1969: 157), following Mommsen (1899: 25, n.4), also saw the Berytus proceedings in particular as a kind of domestic tribunal (Hausgericht). Rabello (1992) argued against the domestic court interpretation, seeing Herod instead as operating as a Hellenistic monarch. There is also longstanding division over whether the *iudicium domesticum* ever existed as a legal phenomenon: see Volterra (1948), Kunkel (1966) and more recently Donadio (2012).

61 See Kunkel's (1966: 225–226) comments on the difficulty of determining whether the trial of the Hasmonean sons was held by a state or domestic court.

62 This is true of the vast majority of the cases where a father exercises his *ius vitae necisque* against his son: if any sort of hearing is described, the father generally pronounces judgment. See Dion. Hal. *Ant. rom.* 8.79.1 for a possible exception, where Cassius' father drags him to the senate to be judged and then exacts punishment.

63 Bammel (1986: 5–7) thought these were all cases in which Caesar was more than an arbitrator, and was very clear in seeing Berytus especially as a formal trial by the court of a Roman colony, even if Herod was responsible for enacting the execution.

the matter by using a public council, made up of both his relatives and the rulers of the province (μετὰ κοινοῦ συνεδρίου τῶν τε ιδίων συγγενῶν καὶ τῶν κατὰ τὴν ἐπαρχίαν ἡγεμόνων).⁶⁴ This συνέδριον is also later referred to as a δικαστήριον in the *Bellum*, though the equivalent passage in the *Antiquitates* sticks with συνέδριον.⁶⁵ terminology is therefore not all that helpful in clarifying the matter. But judges were selected and present, even if Herod's sons were not, and the decision-making process and pronouncement of the verdict is related fully by Josephus. Herod pleaded his case before the judges, and does not seem to have voted – and therefore judged – himself. Thus, while there may have been irregularities in the procedure, such as the absence of the defendants, this does seem to have been conceived as some kind of formal and public court, but one which – it should be noted – Herod chose to convene and comply with, in accordance with the emperor's advice.⁶⁶

When we compare the other two cases, the situation is not so clear.⁶⁷ On the face of it, the hearing of Mariamne's sons before Caesar has an air of formality that one would expect with the emperor presiding: both sides make their cases to an external judge, and he does indeed pronounce a judgment at the end. Yet, as noted above, Alexander at least defines Caesar's role as that of mediator rather than adjudicator; similarly, Caesar's verdict at the end of the hearing seems to attempt to allow his friend to save face, condemning the behaviour of Herod's sons despite their formal lack of guilt. We may wonder if Alexander's rhetoric reflects something of a reality, or at least reflects the view of Josephus or Nicolaus on these proceedings: this could, perhaps, have been something resembling arbitration.⁶⁸ Herod has a personal relationship with Augustus and could have asked him to step in in this way. This would allow the 'judge', or rather arbitrator, greater flexibility in settling the dispute: a bonus in this situation, when Caesar's prime concern would presumably have been to preserve or restore peaceful relations in the client kingdom. Then again, perhaps the involvement of Caesar renders the question of the exact status of this hearing null and void in practical terms: the emperor's word would hardly be disobeyed. Herod had sought recourse to a higher authority in resolving the case – the niceties of the legal status of this trial were not necessarily going to matter to the participants. Would they really have risked disobeying the emperor?

64 Jos. *Bell.* 1.537.

65 Jos. *Bell.* 1. 538; *Ant.* 16. 361.

66 Contra Bammel (1986: 5–6), who saw Herod as acting under great constraint and unwillingly: "Herodes hat sich also einem ihm höchst unbequem Verfahren beugen müssen" (citation at 6). Herod ignored Augustus' advice to include Archelaus among the judges which, I would suggest, confirms he had some freedom in how the court was initially set up and in how to adopt Augustus' suggestions (cf. Volkmann (1969: 156)). Yet I do not dispute it would have looked like a snub to the emperor if he had completely ignored his advised procedure.

67 Even Bammel (1986: 5) admits that the first proceedings against the Hasmonean sons could be seen as one where Caesar acts as a freely requested arbitrator (though he does not subscribe to this view). Otto (1913: 61) interpreted the situation more along these lines: Herod freely turned to Caesar because of the possible implications involved with trying the heirs. Cf. Volkmann (1969: 153–154), who includes a summary of older literature; Zucker (1936: 71–72) takes a similar line.

68 Cf. Volkmann (1969: 154): "Deshalb wird die schwierige Angelegenheit dem Augustus vorgetragen, seine Stellung ist durchaus die eines freiwillig erbetenen Schiedsrichters."

Finally, there is the case of Antipater. There are several oddities here: not least that Herod presided with Varus and yet still made an accusatory speech, though possibly not the main, 'official' accusation since Nicolaus of Damascus seems to step up for that. Herod's presidency could perhaps work in favour of the older interpretations of this trial as an example of an *iudicium domesticum*.⁶⁹ But there is also no verdict 'officially' pronounced: Varus just leaves at the end and the proceedings seem to dissolve thereafter. One wonders whether his presence was meant merely to trumpet Roman awareness or involvement, for reasons that will be explored in due course. Yet Varus' approval for Herod's consequent actions is only assumed by others, not explicitly stated. Moreover, Herod also sends word to the emperor after this trial and awaits his permission before disposing of Antipater. The level of involvement and authorization on the part of Varus is therefore kept somewhat ambiguous. It could perhaps be compared with Archelaus' previous role as a foreign potentate acting to reconcile the parties, but the fact that Varus was a Roman governor and is described explicitly as a δικαστής speaks against this.

There is thus an ambiguity about the exact nature of the various proceedings. One possible explanation for this lies in the narrative itself: Josephus and Nicolaus before him were not writing legal handbooks, or a guide to procedure, Roman or otherwise. Josephus at least is weaving a historical narrative, one that needs to be dramatically compelling to his readers. There is little reason to think he would be concerned to give exact legal details or definitions with regard to the nature of the proceedings, and perhaps even less reason to suppose he would have been conversant enough with Roman legal procedure to set these cases in that framework anyway. Whether we attribute this narrative principally to Josephus or to Nicolaus, it is doubtful whether they would have known how to define these processes in Roman terms, or whether it would even have occurred to them to try to do so in the first place. Put simply, this was not their primary concern.

As such, we should allow for the possibility that the uncertainty here is simply due to the writers themselves. But stating that these authors were uncertain, or did not care, about the exact legal nature of these proceedings is not the same as arguing that they misrepresented them or that the information they do provide – even if not as precise as we might like – is entirely inaccurate. Thus working with the narratives as we have them, one cannot help but reflect that the ambiguity in the exact nature of some of the proceedings could have been a reflection of reality, and indeed this may even have been part of a deliberate strategy. The main purpose of involving the Romans would therefore have been so that Herod could implicitly claim that the guilt of his sons had been proven to – if not pronounced by, in Antipater's case – a Roman authority. In the final example, this could perhaps have been for Augustus's benefit: Herod had by now a reputation for executing his family, so a little outside assurance

69 Against this may be set Schuol's (2007: 151) observations that, of the three proceedings, this is the case which has most in common with Roman criminal proceedings: both parties are heard, witnesses are examined, the accused has a chance to mount a defence, "und seine Schuld wird tatsächlich nachgewiesen".

of his son's true guilt to his Roman overlords would not go amiss.⁷⁰ Equally, perhaps it was meant to provide some little reassurance to Herod's subjects that this was not just a summary execution. Yet leaving the level of Varus' input slightly ambiguous could also have its advantages, since it left Herod freer to do as he pleased – with a veneer of Roman respectability.

It should also be remembered when we seek to classify these proceedings in the above manner, fitting them into a framework of *iudicium domesticum*, arbitration or otherwise, that we are working from an explicitly Roman perspective. Since they were involved in the trials, and in at least two of the above examples appear to have had the final say in each matter, this is a legitimate course to take. But it is only one view of the proceedings, and we should not assume that Herod or his subjects would automatically have thought of them in the same way.⁷¹

The Situation in Client Kingdoms

Before we tackle in more detail the possible motivations behind involving the Roman imperial powers, it is worth considering the general status of client kingdoms such as Judaea in this era. These were not administered directly by the Romans, as a province would be, but rather left to local dynasts to run: this was in some ways more effective and perhaps less costly than taking over the area directly, since the latter would have involved investing manpower in providing provincial administration to the new area.⁷² Client kingship, a much contested term,⁷³ did not have an exact legal status. This was a flexible relationship,⁷⁴ aimed at mutual security: the kings would keep peace at home and supply troops to the Romans when asked, and could (it was hoped) fall back on Roman support in the event of an attack on their own territory.

In this context one would at least suppose that Herod was given a fairly free hand to run his kingdom as he pleased, so long as it remained largely peaceful and secure. This should have extended to his administration of law and justice. For example, he condemned and put to death Tiro, the soldier who raised hell after Alexander and Aristobulus were tried and condemned.⁷⁵ Amongst many others, Sohemus, the guard

70 To the extent that the fourth century writer Macrobius reports that Augustus once joked that he would rather be Herod's pig than his son (*Saturnalia* 2.4.11).

71 Similarly, with regards to Rabello's (1992: 56) emphatic interpretation that Herod did not act either as a Roman *paterfamilias* or a Jewish patriarch but as a Hellenistic king: this may have been true of Herod's own perspective but the Roman authorities could have simultaneously viewed the proceedings otherwise.

72 See Coşkun (2005: 20–22) on the possible advantages of client kingship.

73 The term is a modern one, very rarely used by the Romans, who instead typically referred to such a king as a *socius et amicus populi Romani*. Badian (1958), defended by Rich (1989), employs the *clientela* concept; Braund (1984: 7) rejected the term.

74 See Kropp (2013: 12); Gruen (2009: 14). Others have placed it in more fixed "constitutional" terms: see, for example, Schürer (1973: 316–317) and Schalit (2001: 155–167).

75 *Jos. Bell.* 1.544–550; *Ant.* 16.375–394.

of Mariamne and her mother, was summarily slain without trial;⁷⁶ Mariamne herself was allowed a trial, though this seems to have taken place without any Roman involvement or even notification of the emperor after the fact.⁷⁷ Herod, or an internal court, had competence to pronounce the death sentence within his kingdom, even on members of the royal family. Indeed, it is apparent from the foregoing summaries of the trials of his sons that a common feature is Herod's emphasis on his power to dispose of them exactly as he pleased: he *chooses* to involve a Roman adjudicator; he is under no obligation to do so. How should we explain this decision? Should we even believe that Herod did have such powers over his sons?

Motivations for Involving the Romans

If we allow for the moment that Herod did have the power to dispose of his sons however he wanted – or at least could have had an internal trial for them, without recourse to a foreign power – there may have been several good reasons for choosing to act otherwise. All of these are bound up with the special dynamics connected with the position of a client kingdom and, in all probability, with Herod's own particular political situation. We can thereby see how legal procedures could be affected by the political situation, but equally the course chosen by Herod here may help us understand the complex balance of power in such kingdoms.

The first consideration to take into account is Herod's own specific situation. Herod was not a member of the traditional local ruling dynasty in Judaea: he was a *novus homo*, installed by the Romans.⁷⁸ As such, he lacked the authority that would be derived from traditional power sources in his native land. Indeed, it was due in no small part to his lack of connection with the traditional ruling family that he married Mariamne. His power was granted by the Romans and we should not underestimate how important this Roman backing – and the need to retain it – was to his actions during his reign. Divisions within Judaeian society and the hostility of some of the Judaeian elite towards someone seen as a “half Jew”⁷⁹ meant that he could not risk losing this support.

Consequently, it does not seem so odd that in certain high-profile cases involving the royal family he would deign to consult the Roman imperial authorities. This would be particularly understandable for plots against his own life, which those of his sons (allegedly) were. These pertained to his own rule and the stability of the king-

⁷⁶ Jos. *Ant.* 15.229.

⁷⁷ Jos. *Ant.* 15.229–231. There was some dispute over whether Mariamne should be put to death, but this was decided by the king himself (though he was pressured by Salome and her followers) and not – as in the cases of his sons – after any recourse to Roman advice.

⁷⁸ See Curran's (2005: 77) comments: “It is important to identify Herod as a *Roman* solution to the problem of the government of Judaea”; Kropp (2013: 10–11) on the pluses and minuses of appointing someone from a local dynasty or a new man as a client king.

⁷⁹ Jos. *Ant.* 14.403.

dom, and thus directly touched upon Roman interests. Furthermore, these were plots by his heirs, the people who would be responsible for the region in the future. In this light, one could easily envisage Roman offence if they were not consulted on such matters. Herod had also been granted the right to choose his own successors to his kingdom, a privilege that was worth safeguarding,⁸⁰ so it was presumably in his interests to demonstrate that he was being very careful in monitoring the behaviour of his designated heirs. Despite his nominal autonomy in this matter, he was determined to demonstrate that he still recognized its import to the Romans and was willing to involve them in any problems arising. Thus, by choosing this particular course of action, Herod took the opportunity to make direct contact with the imperial centre. He could present himself as a conscientious ruler who kept them fully informed, and was more than willing to consult on important events in his kingdom. He was not to know in the beginning how often he would have to then inform them about family problems.

It is worth stating that the principle of consulting the Romans as a kind of security tactic was by no means unique to Herod. The letter of Attalus II of Pergamum to Attis, a priest in Pessinus (c. 159 B. C. E.), merits a brief mention in this respect:⁸¹ Attalus II, when considering a military expedition of some kind, took the suggestion of one of his advisors to heart, “to in no way do anything without the Romans” (καὶ οὐθενὶ τρόπῳ συμβουλευόν οὐθὲν ἄνευ κείνων πράσσειν). His reasoning was that, if he proceeded to act without their involvement, he would only incur Roman envy if successful; if unsuccessful, the Romans would only revel in a sense of Schadenfreude because he had dared to proceed without them. The reasoning of these two kings was not all that far apart.⁸²

Equally, involving the Romans had the added effect at home of re-advertising Herod's connection to the imperial power. This would work on both a personal and broader, political level, though the two are inextricably linked in client kingships in this era. Caesar's hearing of the first case against Alexander and Aristobulus meant that Herod could advertise his friendship with the emperor: Augustus had, after all, given him a personal audience. But the formalized trial in Berytus also served to announce this connection: here, all the most important members of Roman government were assembled to guard Herod's interests (or so it could be said).⁸³ While Herod may not have wanted to look like a Roman puppet, there could also have been a value in such stagings. They reminded any disgruntled elites exactly how close Herod was to the central imperial power and might perhaps have caused second thoughts about any attempted coup.

80 Jos. Bell. 1.454, 458; Ant. 15.343; 16.92.

81 OGIS 315 C VI; see Sherck (1984: No. 29) for an English translation.

82 See also van Wijlick (2015: 53–57) on how Rome was frequently called in to act as an arbitrator in internal power conflicts in the civil war period: appeal to the Romans seems to have been a fairly longstanding, common activity.

83 Schuol (2007: 152–153) has noted that the concessions Herod made to the Romans in all three proceedings could also have been of use to him personally: “Schließlich zeigte die Besetzung des Konsiliums und der Richterposten mit hochrangigen römischen Beamten die Wichtigkeit des Verfahrens und erhöhte zugleich die Autorität des abschließenden Urteils.”

The other plus point in farming such cases out to the Romans was the potential for using their involvement as an excuse. Herod is explicitly said to have acted with caution in referring the first case against his sons to Caesar; one might pause to wonder what could have happened if he had proceeded without Roman involvement, if he had done as he claimed he could and dealt with his sons himself. Alexander and Aristobulus were Mariamne's boys and thus Hasmoneans. They had public sentiment on their side. Roman, outsider involvement could have been a safeguard and not just for reasons of advertising Herod's support base. There was also potential to use this as an excuse: Herod did not condemn his sons or find them guilty, the Romans did. In light of these decisions by such a powerful overlord, he could plead that he had to react in the strongest possible terms. Even if these overlords had actually advised leniency, this private detail did not have to be broadcast.

As such, the decision to involve the Romans at each point had potential advantages to Herod both with the Romans themselves and in terms of his internal political position. The careful tightrope he had to walk with regards to dealing with his sons and heirs makes evident the complex, somewhat precarious position of client kings more generally at this time: monarchs had to negotiate carefully between their homeland concerns and authority-bases, and the external imperial authorities from whom they, to a greater or lesser extent, derived their power. In Herod's case, this was a greater extent, and that is perhaps manifested in how he chose to deal with these situations. Beyond this, he had to maintain and be seen to maintain his personal relationship with Augustus, on which so much rested. All this had a great effect on the course of justice in these particular cases.

This is, however, all if we buy Herod's claims that he could have taken another course and dealt with his sons without Roman involvement based on his rights both as king and father.⁸⁴ They question is: should we believe this claim?

Herod's Legal Position: A Matter of Perspective

Antipater, Herod's father, was granted Roman citizenship by Julius Caesar in 47 B. C. E.⁸⁵ In Josephus' account, he states only that Antipater was given citizenship and freedom from taxes; no further details on the exact wording of the grant are given. It is typically assumed that Herod was also a Roman citizen:⁸⁶ the initial grant might have extended to members of Antipater's family. Client kings were fairly often granted citizenship,⁸⁷ and even entered the Roman senate by 100 C. E. According to Dio Cassius, Herod's own descendants, Herod II and Agrippa I, held the ranks of praetor and consul respectively under Claudius.⁸⁸ We also know that Agrippa I and his son were

84 Otto (1913: 61): see n.67.

85 Jos. *Ant.* 14.137; cf. *Ant.* 16.53; *Bell.* 1.194.

86 Geiger (2002: 237–238) does not question this, but notes that even in the ancient world Herod's Roman citizenship was simply "taken for granted and left"; cf. Geiger (1997: 88).

87 See Braund (1984: 39–53) on this subject, who catalogues the known citizen kings.

88 Dio Cass. 60.8.2–3.

Iulii. The assumption that Herod was a citizen is therefore in and of itself not at all an unreasonable one.⁸⁹ But clarifying whether his sons were citizens is a slightly more difficult issue. Children were born citizens if both parents had Roman citizenship or if one was a citizen and the other a peregrine who had been granted *conubium*. Unless Mariamne or Doris were either granted *conubium* or made citizens, this does not apply to Herod's sons. It is possible that the grant to Herod or his father somehow included his descendants,⁹⁰ or that Alexander, Aristobulus, and Antipater all received their own grants of citizenship from Augustus personally. Although this is not certain and goes unmentioned in the sources, it is entirely plausible given the sons' status, their father's friendship with the emperor, the fact that they had all spent time in Rome, and were at various points designated successors to their father's kingdom.

If his sons were citizens, then how would this affect Herod's position? In Roman legal terms as a father he technically had *ius vitae necisque* over his offspring by virtue of his own *patria potestas*, i. e. he had the power to condemn them to death.⁹¹ This right was an ancient one, but gradually became less absolute: it was already beginning to be circumscribed in the Twelve Tables, when it was required that there be clear *iusta causa* for the action (being caught in the act, for example), otherwise a *consilium* had to be consulted. We know that by the jurist Ulpian's time (late second – early third century C. E.) fathers had to accuse their sons before the prefect or the provincial governor rather than simply summarily execute them.⁹² How far this power had been curtailed in the late first century B. C. E. is another matter. But from the Roman perspective, Herod's claims to have had power over his sons would not have been completely outlandish. This would not have meant that he would have had unanimous approval from that quarter if he had killed them on the spot, but technically he would have been viewed by Rome as having *potestas* over them. Indeed, the traditional interpretation of all the proceedings against Herod's sons as domestic courts generally advance to that conclusion on the basis of assuming Herod's right to exercise his *potestas* in this way.⁹³

89 Though this is usually based on reasoning from his father's citizenship: see for example Braund (1984: 44), who also notes that it is only as late as Agrippa I that any Herodian is attested as having the *tria nomina*.

90 For example, a second century C. E. grant of citizenship to a chief of the Zengrenses, a tribe in Mauretania Tingitana (recorded on a bronze tablet found in Morocco), explicitly includes members of his family: see Euzennat, Marion, and Gascou (1982: no. 94); cf. the comments by Millar (1998: 359–361) on this.

91 See especially Yaron (1962) and Westbrook (1999) on this, with comparison to the Near Eastern tradition, including the Biblical texts. On Herod's *patria potestas*, see Zucker (1936: 71).

92 See Ulpian, *Adulterers*, Book 1 (Dig. 48.8.2). For a collection of cases, see Sachers (1953: 1086–1087), Harris (1986: 82–87), and Frier and McGinn (2003: 193–210). The case of Tarius, set out in Seneca, *De Clementia* 1.15.1–6.16.1, provides an interesting comparison with that of Herod, even if it ended in the sons being exiled rather than killed. The son was accused of plotting to kill his father – like Herod's sons – and the case heard in a family *consilium*, in which Augustus participated: it should be noted that Seneca states that the inquest would have been rather more formal had it taken place at Caesar's, not the father's, home (it would have been a *Caesaris ... cognitio, non patris* (15.3)).

93 See n.60 for bibliography. Schuol (2007: 147–148) argues that the second proceedings against Alexander and Aristobulus were set up by Augustus as a kind of domestic court process, but gradually became distorted by Herod's manoeuvrings.

The next question – related to this – is whether, again from the Roman perspective, Herod had the authority *as a king* to dispose of his sons as he liked if they were indeed Roman citizens. In provinces (as opposed to client kingdoms) governors had the *ius gladii*,⁹⁴ but citizens also had the right of appeal against a death sentence.⁹⁵ Whether Jews could impose capital punishment against their own people after Judaea became a province is something of a vexed issue, but I am not sure that even those who would affirm that Jews could do so would then go so far as to state that they could have or would have dared to exercise this against Roman citizens.⁹⁶ While the situation is not entirely clear for client kings, I would argue that the same would probably be true: it is highly unlikely that Herod would have condemned Roman citizens to death and had them executed without some sort of Roman cognizance and approval. To do so would have, at the very least, risked a political storm.

Consequently, from the Roman perspective, if his sons were indeed citizens, Herod would have been on safer ground taking action against them on the basis of his rights as a father rather than his position as king. But even if he was viewed by Rome to have acted through his *patria potestas*, executing his sons of entirely his own accord would have been a harsh punishment and probably would have incurred severe disapproval. Executing them after an internal court hearing with no Roman involvement – as he had done with Mariamne – could have been a safer route, but would also have involved a degree of risk. But the emphasis that Herod, or more probably the people advising him, placed on his rights as a father could potentially be seen as a strategy on his part to appeal to this facet of the Roman legal mentality. It gave the various Romans involved an excuse for coming down on his side.⁹⁷

But these kinds of paternal rights were not exclusive to Roman law. If we now shift perspective from that of the Roman legal framework to that of Herod and his advisors, his claims to have had the power to do as he wanted with his sons could have come from two sources: first, his rights under Jewish law, which he explicitly invokes when he refers to a law of his own country in the proceedings at Berytus; second, his rights as a king, which he also mentions explicitly in the first hearing before Augustus, and which Alexander picks up on in his own response during these proceedings.⁹⁸ The

94 See Garnsey (1968) on this subject.

95 See Garnsey (1966) on the right of appeal.

96 For example, Winter (1964: 494–495), in defending his previous position that the Sanhedrin had the power to pronounce the death sentence, states: “Classical Roman law defines the *jus gladii* as the authority of the Roman emperor to enact punishment on Roman citizens who had transgressed Roman law, and to inflict on them any legally stipulated penalty including that of death. ... At no time did the Sanhedrin possess the *jus gladii*” (citation at 494).

97 Rabello (1992: 51) argues that with regard to *patria potestas*, “Herod was afraid to get into this subject”, in view of the fact that most of the people on the panel would be more expert on the matter than he was. But it is possible to frame one’s arguments in a manner that is likely call such concepts to mind without explicitly invoking this right; as will be argued, this reference to a father’s power could in fact have had a resonance to both Roman and Jewish listeners.

98 Herod claims that in coming before Augustus, he, “had given up all his own rights as a father undutifully treated and as a king plotted against” (καὶ παρελόμενος αὐτοῦ πᾶν ὅσον ἡ πατὴρ ἀσεβοῦμενος ἡ βασιλεὺς ἐπιβουλευόμενος δύνатаι) (Jos. Ant. 16.98); at Jos. Ant. 16.106, Alexander states, “For having both the au-

biblical law in question that confirms this, in a way that is actually rather similar to the Roman developments, necessitates a hearing before the elders before he is stoned: summary execution does not seem to be envisaged here either.⁹⁹ But this tradition certainly provided some substance to Herod's claims, from his own point of view at least.

Finally, we come to Herod's position as monarch and his use of this to justify what he claimed to be his right to act. Indeed, Rabello argued at length that in all these proceedings, Herod took action not based on his *patria potestas* nor as a Jewish patriarch, "but as a Hellenistic king";¹⁰⁰ he saw the "courts" convened to try Mariamne and the sons as the same of that of Hellenistic kings, with jurisdiction in capital matters. This certainly works from Herod's perspective, though I would be hesitant to follow Rabello so far as to say this was the sole basis on which he acted: Herod's support of both Jewish and Hellenistic cultures, depending on the relevant area and population, is well known. He was a figure who straddled the boundaries, promoting his image as a Hellenistic benefactor in the Graeco-Roman world more broadly, while being careful to support Jewish culture at home, for example, in the extensive renovations of the Jerusalem Temple. That he, or perhaps more probably his advisers, could justify his rights and actions based on both Jewish and Hellenistic tradition seems far from outlandish.

What we come back to, then, is that the issue of Herod's legal position in these proceedings is not an absolute but a matter of perspective. There does not seem much doubt that he really did have the right to dispose of his sons, but whence precisely this derived and how any punishment should have been carried out depends very much on whose perspective we wish to adopt. From Herod's own point of view, he had a twofold right to act, which he states very clearly throughout the proceedings: this was based on his position as a father (presumably a Jewish patriarch in this context) and as a king. From the Roman viewpoint, the justification would probably have been a little more restricted, and would have been based primarily on his rights as a *paterfamilias*: while Romans were more than willing to take indigenous law into account, and an appeal to this could have strengthened Herod's position, the (probable) position of his sons as Roman citizens may have made things rather more complicated. When Herod places such emphasis on his rights as a father, this could thus have had a useful double meaning: it could refer to the basis on which Herod personally believed he had the right to act, and it could allow any Roman adjudicators a way of justifying the execution of two Roman citizens based on principles familiar in Roman law, even if the exact procedure was not what we would expect to be followed in such cases. Consequently, if we attempt to pinpoint just one of these traditions as the fundamental basis on which Herod acted, it seems to me that we are in danger of drastically oversimplifying the complexity of these rather extraordinary proceedings. Not only did various

thority of a king and the authority of a father, you might have punished the guilty" (καὶ γὰρ ἐξῆν παρούσης μὲν ἐξουσίας ὡς βασιλεῖ, παρούσης δὲ ὡς πατρὶ, τοὺς ἀδικοῦντας ἐπεξείναι).

99 *Deut.* 21:18–21. See Rabello's (1992: 50–51) comments on whether Herod's actions really were in accordance with this law.

100 Rabello (1992: 52).

legal traditions meet¹⁰¹ but different perspectives competed and ultimately, in these specific cases, could co-exist. Herod could believe his actions were justified based on Jewish and Hellenistic traditions; the Romans may have been aware of this, but themselves seen the ultimate justification for his actions in his power as *paterfamilias*.

But even so, Herod did still choose to involve the Roman imperial government. While he may therefore have felt perfectly legally justified in the actions he wanted to take, the reality of the Roman power looming in the background seems to have resulted in some degree of uncertainty in his position, in political terms at least. But at each of the proceedings, he understandably admitted to no such uncertainty: he confidently asserted his rights. While this is exactly what is to be expected in any kind of legal conflict – why would you compromise your position by admitting to any uncertainty? – it could also have had another purpose. In confidently claiming his rights in the Hellenistic and Jewish tradition, Herod could also have been attempting to claim some acknowledgement of his power from his Roman overlords. In some ways, this was a diplomatic strategy to assert his rights, or rather what he wanted his rights to be. While we might view this as legally redundant, politically it was vital.

Conclusions

Client kings had to walk a tightrope between the demands of Rome and their own kingdoms. Herod's position as a monarch installed based on Roman – rather than internal – support probably meant he tended to lean on his connection with Rome as a power and his personal relationship with Augustus more than most. While he certainly consolidated his position throughout his reign, his dependence on Rome should not be overlooked. The nature of this rule and his power base is more than evident in the way he dealt with the accusations against his sons.

Indeed, the trials of Herod's sons provide us with a window into the dynamics of this relationship with Rome, which was both political and personal. But we should also consider what this tells us about justice administration in this particular client kingdom. All recourse to the Romans is taken on Herod's initiative: none is imposed, without his say, on the king. When the emperor makes recommendations or decisions, it is at Herod's request. It is clear that high-level justice administration was significantly influenced by the advent of the Romans, even when nominal independence was maintained. Lower down the ladder – when Herod was not involved and the Romans certainly were not – trials and disputes probably continued to be settled in very much the same way as they always had, and being a client kingdom would have made little difference to the course of justice. Furthermore, we might pause to consider what would happen in other such kingdoms in which the ruler had either a firmer internal power-base or did not have quite such a close relationship with the Roman emperor.

101 As Schuol (2007: 156) observed.

Decisions were probably made on a case by case basis and varied from place to place, but perhaps Herod's readiness to cede authority in such matters is something that was specific to his peculiar situation.

Nevertheless, Herod's legal position seems to have been pretty secure from various perspectives, so long as some kind of hearing took place before any executions. Indeed, it has been suggested that statements about the exact legal tradition that constituted the basis of Herod's power to execute his sons are completely dependent on whose perspective we chose to adopt: Jews and Romans could use different justifications during the various proceedings to produce the same result. Furthermore, we should not be surprised that there does not appear to have been a definite legal procedure laid out for such extraordinary cases, to be followed in every eventuality. In the events described here, those involved seem to have treated these proceedings on a case by case basis, hence the differences in procedure between them. Our uncertainty about the exact nature of the proceedings in such matters thus may reflect the view of those at the time. Indeed, the ambiguity may even have worked well. Solutions could be found to meet the demands of each particular situation and could have been varied from king to king and case to case. The lack of a fixed, uniform legal procedure can therefore ultimately be related to the very nature of client kingship itself: the flexibility of the institution led to a similarly flexible and dynamic attitude towards legal disputes and justice administration at the highest level. Indeed, this was a vital ingredient in what made the relationship between king and Rome work.

Bibliography

- Badian, E. 1958. *Foreign Clientelae (264–70 BC)*. Oxford: Clarendon Press.
- Baltrusch, E. and Wilker, J. eds. 2015. *Amici – socii – clientes? Abhängige Herrschaft im Imperium Romanum*. Berlin Studies of the Ancient World 31. Berlin: Topoi Excellence Cluster.
- Bammel, E. 1986. Die Rechtsstellung des Herodes. In: Bammel, E. *Judaica: Kleine Schriften I*. WUNT 37. Tübingen: Mohr, pp. 3–9. Originally printed in: *Zeitschrift des Deutschen Palästina-Vereins* 84 (1962), pp. 73–79.
- Barrett, A. A. 1990. Claudius, Gaius and the Client Kings. *The Classical Quarterly* n. s. 40:1, pp. 284–286.
- Braund, D. 1984. *Rome and the Friendly King. The Character of Client Kingship*. London: Croom Helm; New York: St. Martin's Press.
- Coşkun, A. 2005. Freundschaft und Klientelbildung in Roms auswärtigen Beziehungen. Wege und Perspektiven der Forschung. In: Coşkun, A., ed. *Roms auswärtige Freunde in der späten Republik und im frühen Prinzipat*. Beihefte zum Göttinger Forum für Altertumswissenschaft, 19. Göttingen: Duehrkohp & Radicke, pp. 1–30.
- Curran, J. 2005. 'The Long Hesitation': Some Reflections on the Romans in Judaea. *Greece & Rome* 52:1, pp. 70–98.
- Donadio, N. 2012. Iudicium domesticum: riprovazione sociale e persecuzione pubblica di atti commessi da sottoposti alla patria potestas. *Index* 40, pp. 175–195.
- Euzennat, M., Marion, J., and Gascou, J. 1982. *Inscriptions antiques du Maroc II: Inscriptions latines*. Paris: CNRS.

- Frier, B. W. and McGinn, T. A. J. 2003. *Casebook on Roman Family Law*. Oxford: Oxford University Press.
- Garnsey, P. 1968. The Criminal Jurisdiction of Governors. *The Journal of Roman Studies* 58:1–2, pp. 51–59.
- Garnsey, P. 1966. The Lex Iulia and Appeal under the Empire. *The Journal of Roman Studies* 56:1–2, pp. 167–189.
- Geiger, J. 2002. Language, Culture and Identity in Ancient Palestine. In: Ostenfeld, E. N. ed. *Greek Romans and Roman Greeks: Studies in Cultural Interaction*. Aarhus Studies in Mediterranean Antiquity 3. Aarhus: Aarhus University Press, pp. 233–246.
- Geiger, J. 1997. Herodes Philorhomaioi. *Ancient Society* 28, pp. 75–88.
- Gruen, E. S. 2009. Herod, Rome, and the Diaspora. In: Jacobson, D. M. and Kokkinos, N. eds. *Herod and Augustus. Papers Presented at the IJS Conference, 21st–23rd June 2005*. Leiden: Brill, pp. 13–27.
- Harris, W. 1986. The Roman Father's Power of Life and Death. In: Bagnall, R. S. and Harris, W. V. eds. *Studies in Roman Law in Memory of A. Arthur Schiller*. Leiden: Brill, pp. 81–95.
- Jehne, M. and Pina Polo, F. eds. 2015. *Foreign clientelae in the Roman Empire: A Reconsideration*. Historia Einzelschriften 238. Stuttgart: Franz Steiner Verlag.
- Kasher, A. and Witztum, E. 2007. *King Herod: The Persecuted Persecutor*. Studia Judaica 36. Berlin: de Gruyter.
- Kropp, A. J. M. 2013. *Images and Monuments of Near Eastern Dynasts, 100 BC – AD 100*. Oxford Studies in Ancient Culture and Representation. Oxford: Oxford University Press.
- Kunkel, W. 1966. Das Konsilium im Hausgericht. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 83, pp. 219–251.
- Landau, T. 2006. *Out-Heroding Herod. Josephus, Rhetoric, and the Herod Narratives*. Leiden: Brill.
- Millar, F. 1988. Government and Diplomacy in the Roman Empire during the First Three Centuries. *The International History Review* 10:3, pp. 345–377.
- Mommsen, T. 1899. *Römisches Strafrecht*. Leipzig: Duncker & Humblot.
- Otto, W. 1913. *Herodes. Beiträge zur Geschichte des letzten jüdischen Königshauses*. Stuttgart: Metzler.
- Rabello, A. M. 1992. Herod's Domestic Court? The Judgment of Death for Herod's Sons. *The Jewish Law Annual* 10, pp. 39–56.
- Rich, J. 1989. Patronage and Interstate Relations in the Roman Republic. In: Wallace-Hadrill, A. ed. *Patronage in Ancient Society*. London: Routledge, pp. 117–135.
- Sachers, E. 1953. Potestas patria. *Real-Encyclopaedie* 22.1, cols. 1046–1175.
- Schalit, A. 2001. *König Herodes: der Mann und sein Werk*. 2nd edition. Berlin: De Gruyter.
- Schuol, M. 2007. *Augustus und die Juden. Rechtsstellung und Interessenpolitik der kleinasiatischen Diaspora*. Studien zur Alten Geschichte 6. Frankfurt: Verlag Antike.
- Schürer, E. 1973. *The History of the Jewish People in the Age of Jesus Christ. Vol. I*. Revised and edited by G. Vermes and F. Millar. Edinburgh: T. and T. Clark.
- Sherk, R. K. 1984. *Rome and the Greek East to the Death of Augustus*. Translated Documents of Greece and Rome 4. Cambridge: Cambridge University Press.
- Van Wijlick, H. 2015. Attitudes of Eastern Kings and Princes towards Rome in the Age of Civil War, 49–31 BC. In: Baltrusch, E. and Wilker, J. eds. 2015. *Amici – socii – clientes? Abhängige Herrschaft im Imperium Romanum*. Berlin Studies of the Ancient World 31. Berlin: Topoi Excellence Cluster, pp. 51–66.
- Volkman, H. 1969. *Zur Rechtsprechung im Principat des Augustus. Historische Beiträge*. 2nd edition. Munich: Beck.
- Volterra, E. 1948. Il preteso tribunale domestico in diritto Romano. *Rivista italiana per le scienze giuridiche* 85, pp. 103–153.
- Westbrook, R. 1999. Vitae Necisque Potestas. *Historia: Zeitschrift für Alte Geschichte* 48:2, pp. 203–223.

- Wilker, J. 2007. *Für Rom und Jerusalem. Die herodianische Dynastie im 1. Jahrhundert n. Chr.* Studien zur Alten Geschichte 5. Frankfurt: Verlag Antike.
- Winter, P. 1964. The Trial of Jesus and the Competence of the Sanhedrin. *New Testament Studies* 10:4, pp. 494–499.
- Yaron, R. 1962. Vitae Necisque Potestas. *Tijdschrift voor Rechtsgeschiedenis* 30, pp. 243–251.
- Zucker, H. 1936. *Studien zur jüdischen Selbstverwaltung im Altertum.* Berlin: Schocken Verlag.

KIMBERLEY CZAJKOWSKI

Westfälische Wilhelms-Universität, Exzellenzcluster Religion und Politik,
Johannisstraße 1, D-48143 Münster, k.czajkowski@uni-muenster.de

